

Singapore

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1. **What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?**

Enforcement in Singapore is a combination of two concepts, namely (i) recognition of a foreign judgment by way of the Singapore courts entering a Singapore judgment for the foreign judgment debt; and (ii) execution of the Singapore judgment. There are various means by way of which a party can seek recognition of its foreign judgment for this purpose so as to be able to pursue execution processes in Singapore.

Reciprocal enforcement of foreign judgments

Like many countries around the world, Singapore enforces foreign judgments on a reciprocal basis, i.e. it has an understanding with a foreign country that each other's judgments would be enforced through a registration process that presumes the validity of the foreign judgment unless the foreign judgment debtor can show, exceptionally, that there has been a failure of due process. The regime in Singapore was previously governed by the Reciprocal Enforcement of Foreign Judgments Act 1959 (“REFJA”) and the Reciprocal Enforcement of Commonwealth Judgments Act 1921 (“RECJA”), but RECJA was repealed effective 1 March 2023 with the intention of streamlining and consolidating the legal framework under REFJA.

The REFJA now applies to final money judgments of superior courts of Brunei Darussalam, Australia, India, Malaysia, New Zealand, Pakistan, Papua New Guinea, Sri Lanka and the United Kingdom of Great Britain and Northern Ireland, as well as judgments of the superior courts of Hong Kong SAR.

Generally, applications for recognition may be made without notice to the judgment debtor, and the applying party must confirm that the judgment cannot be set aside under any of the grounds set out in s 5 REFJA. The Singapore court may additionally refuse registration of a money judgment if it appears that it awards damages (including exemplary or punitive damages) that are in excess of compensation for the actual loss or harm suffered by the relevant party, and allow enforcement only on the part that reflects the amount of compensation (see s 4(5) REFJA). For non-money judgments, these will be registered only if the Singapore court is satisfied that enforcement of the judgment would be just and convenient. If the court of the opinion that such enforcement would not be just and convenient, the court may make an order for the registration of such amount as it considers to be the monetary equivalent of the relief (see s 4(4) REFJA).

Once the foreign judgment is registered, it may be enforced in the same manner as a judgment of the Singapore court after expiry of the period allowed for the judgment debtor to set aside the registration.

Recognition via the Convention on Choice of Court Agreements concluded at The Hague on 30 June 2005

The Convention on Choice of Court Agreements was concluded with the intention of enhancing judicial co-operation globally through introducing uniform rules on jurisdiction and on recognition and enforcement of foreign judgments in civil or commercial matters. It obliges Contracting States to recognise and enforce foreign judgments of the courts of other Contracting States that were made in proceedings commenced and maintained under a jurisdictional agreement or a valid transfer of proceedings (or judicial settlements approved or concluded before a court of a Contracting State, and enforceable as a judgment). Singapore gave effect to the Convention by enacting the Choice of Court Agreements Act 2016 (“CCAA”).

Similar to the regime under REFJA, there is a general presumption of validity of the foreign judgment, allowance for provisional registration of the judgment without notice to the judgment debtor and a time within which the foreign judgment debtor can ask the Singapore court not to recognise it on the grounds of failure of due process. The Singapore court may not review the merits of the foreign judgment except to the extent necessary to apply the provisions of the CCAA, and are bound by any findings of fact on which the court of origin assumed jurisdiction, unless the foreign judgment was given by default (see s 13(3) CCAA).

The Singapore court *must* however refuse recognition or enforcement in the event of any of the circumstances set out at s 14 CCAA, namely, where the defendant was not notified of the commencement of the foreign case, where the foreign judgment was obtained by fraud in connection with a matter of procedure, and where the recognition or enforcement of the foreign judgment would be manifestly incompatible with the public policy of Singapore. The Singapore court *may* also refuse recognition or enforcement in the event specified circumstances set out at s 15 CCAA, which include circumstances such as if the exclusive choice of court agreement applicable to the dispute in relation to which the foreign judgment was obtained is null and void, a party to the exclusive choice of court agreement in question lacked capacity, and/or the foreign judgment is inconsistent with another valid judgment. The Singapore court may also refuse recognition or enforcement if the foreign judgment awards damages (including exemplary or punitive damages) in excess of compensation for the actual loss or harm suffered by the party awarded the damages.

Memorandums of Guidance and other informal arrangements

Singapore has also entered into Memorandums of Guidance with the courts of Bermuda, China, Rwanda, Myanmar, Qatar, Abu Dhabi and Dubai on the recognition and

enforcement of certain money judgments (in commercial cases). These Memorandums of Guidance have no binding legal effect, but are a useful guide as to how such judgments are likely to be treated by the Singapore court. The Singapore courts have also exchanged letters with the Supreme Court of Victoria (Commercial Court) in Australia for a similar purpose.

Recently, on 1 April 2023, the Singapore International Commercial Court (SICC) also signed a Memorandum of Understanding on Co-operation with the China International Commercial Court to develop and implement a Litigation-Mediation-Litigation framework for the management of international commercial disputes in the context of the Belt-and-Road Initiative.

Recognition by suing on the foreign judgment debt

Like many other common law jurisdictions, Singapore has a route for recognising foreign judgment debts through a process whereby the foreign judgment creditor sues the foreign judgment debtor in Singapore, using the foreign judgment debt as the basis for its claim. Conceptually, the judgment of the foreign court gives rise to a debt owed by the foreign judgment debtor, which the foreign judgment creditor asks the Singapore court to recognise.

The primary difference between this and the statutory regimes under REFJA and CCAA is that there is no provisional recognition of the foreign judgment. The foreign judgment creditor must start proceedings and serve them on the foreign judgment debtor (and comply with all the usual rules for service of process in this regard). However, similar to the REFJA and CCAA regimes, the foreign judgment creditor is obliged to prove both the fact of the foreign judgment as well as its regularity to the Singapore court, and the foreign judgment debtor will have opportunity to disprove their claims of regularity and offer proof of failure of due process.

The Singapore court will in such proceedings only recognize final and conclusive judgments *on the merits*; *i.e.* it must be a judgment which cannot be varied, re-opened or set aside by the court that delivered it, and is considered final and conclusive by the foreign court (see *The Bunga Melati* 5 [2012] 4 SLR 546 at [81] and *Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another* [2016] 5 SLR 1322 at [68-70]). The Singapore court must also be satisfied that, according to its own rules of private international law, the foreign court rendering the judgment had jurisdiction to give that judgment, *i.e.*, jurisdiction in the “*international sense*”. This would generally entail the defendant having a presence in the foreign country, filing a claim or counterclaim before the foreign court, voluntarily submitting to the jurisdiction of the foreign court by appearing in the proceedings, and agreeing to submit to the jurisdiction before the commencement of proceedings (see *Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another* [2016] 5 SLR 1322 at [71]).

	<p>If these criteria are satisfied, the Singapore court will ordinarily not reopen the merits of the claim. The foreign judgment will be regarded as conclusive on the matter thereby adjudicated upon, and cannot be impeached for any error, whether of fact or of law. The party seeking to enforce the foreign judgment can therefore apply for summary judgment on the ground that the defendant has no defence to the claim.</p> <p>The Singapore court will only refrain from enforcing a foreign judgment if it is shown that the plaintiff procured it by fraud, or if its enforcement would be contrary to public policy or if the proceedings in which the judgment was obtained were opposed to natural justice (see <i>Hong Pian Tee v Les Placements Germain Gauthier Inc</i> [2002] 1 SLR(R) 515 at [12]).</p>
<p>2.</p>	<p>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?</p>
	<p>There are no cases or statutes which prescribe different processes or standards when a party initiates enforcement proceedings against States. However, the Singapore court will be particularly concerned with ensuring that the foreign State was properly notified both of the original proceedings in the foreign State as well as of the recognition/enforcement proceedings in Singapore, and that the foreign court in the original proceedings had jurisdiction to determine the dispute, and it may impose more stringent conditions on the judgment creditor in this regard before it would recognise or enforce the foreign judgment.</p>
<p>3.</p>	<p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?</p>
	<p>Singapore recognises the concept of state or sovereign immunity, which essentially provides that states are sovereign and therefore not subject to the mandatory powers of another state unless they are acts that are purely within the private law sphere or where the state has submitted to the jurisdiction of the Singapore court. Singapore’s position on this matter has been codified under the State Immunity Act 1979 (“SIA”).</p> <p>S 3 of the SIA therefore provides that foreign States are generally immune from the jurisdiction of the courts of Singapore and s 15(2) of the SIA further provides that relief must not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property, and that the property of a State must not be subject to any process for the enforcement of a judgment or an arbitration award or, in an action in rem, for its arrest, detention or sale. It follows that the courts of Singapore would generally not be entitled to issue enforcement orders against States.</p> <p>However, Singapore explicitly recognises a commercial exception to a foreign State’s immunity at s 5 of the SIA, which provides that States are generally not immune in respect of proceedings relating to commercial transactions. There are also other exceptions to immunity set out at s 4, 6-13 of the SIA, which include circumstances where the state has</p>

	<p>submitted to the jurisdiction of the Singaporean courts (see s 4(1) SIA), contracts of employment (see s 6 SIA), proceedings in relation to death or personal injury or damage to property (see s 7 SIA), immovable property (see s 8 SIA) and intellectual property (see s 9 SIA). There should be no impediment to recognition and enforcement in Singapore if the foreign judgment concerns one or more of these exceptions.</p> <p>There are also exceptions to the general prohibition against enforcement action against States. S 15 (3) of the SIA provides that s 15(2) SIA does not prevent grant of relief by the Singapore court if the State has given its consent in writing to the same, which consent may be expressed or contained in a prior agreement. And, S 15(4) SIA also permits the issue of execution processes against States in respect of property for the time being in use or intended for use for commercial purposes.</p>
<p>4.</p>	<p>What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?</p>
	<p>The exceptions to a foreign States’ general immunity are set out in the SIA (see above). The SIA does not however specifically address the matter of wars or similar actions by a foreign State and there have not been any cases which address such a situation thus far.</p> <p>While the Singapore courts would, as a general rule, be prepared to consider enforcing foreign judgments in favour of foreign judgment creditors (so long as requirements as to notice and due process are observed), it is possible that Singapore public policy may lead a Singapore court to refuse to enforce a foreign judgment in exceptional cases. One such very exceptional situation may arise if the foreign judgment creditor is considered to be an alien enemy of Singapore or to belong to a country against whom Singapore has implemented measures. There may also be considerations of Singapore’s foreign policy that might apply. The reader is advised to seek professional legal advice if the possibility of such an issue exists.</p>
<p>5.</p>	<p>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</p>
	<p>See (2) above.</p>
<p>a.</p>	<p><i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i></p>
	<p>The issue of whether a defendant was properly served in the original proceedings in a foreign court will generally be determined by the applicable foreign law, except where the procedural law of the original court or its application is shown to be or to have been so repugnant to the sense of justice of the registering court as to persuade it that it would be wrong to give effect to a judgment obtained under such a regime or in such circumstances (see <i>Harrisons Trading (Peninsular) Sdn Bhd v Juta Perkara Sdn Bhd and others</i> [1996] 3 SLR(R) 712).</p>

	<p>S 5(1)(a)(iii) REFJA expressly permits the Singapore court to find that a judgment debtor was not given requisite notice of the proceedings notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court. S 15(c) of the CCAA also permits the Singapore court discretion to refuse recognition or enforcement when the notification of the foreign proceedings was effected in a manner incompatible with the fundamental principles in Singapore concerning the service of documents, and s 14(c) of the CCAA provides that the court <i>must</i> refuse enforcement where specific proceedings leading to the judgment would be incompatible with fundamental principles of procedural fairness in Singapore.</p> <p>There are no cases or statutes in Singapore which prescribe a different standard or test where the defendant is a State. However, the Singapore court may be concerned with ensuring that the method of service employed in the foreign state is reasonably consistent with the rules under the SIA and Rules of Court 2021 (“ROC 2021”) which govern service of originating process on a State or government in Singapore court proceedings.</p> <p>In this regard, service of originating process may be effected on a State or government by the claimant making a request for the Singapore Ministry of Foreign Affairs to arrange service on the relevant State’s ministry of foreign affairs (see O 8 r 6 of ROC 2021 and S14 of the State Immunity Act 1979 (“SIA”). Service on the foreign State is only deemed to have been effected when the originating process has been received by the relevant State’s ministry of foreign affairs (see s 14(1) SIA). Alternatively, a State may be served in any manner to which it has agreed (see s 14 (6) SIA and O 6 r 5 ROC 2021). The claimant must also first obtain the court’s approval to effect service out of Singapore on the State by, among others, demonstrating that the Singapore court has jurisdiction or is the appropriate court to hear the action (unless service out of Singapore is allowed under the relevant contract between parties) (see O 8 r 1 ROC 2021).</p> <p>In addition, the SIA provides for States to have an extended timeframe of 2 months to appear in the court proceedings after such service (S14(2) SIA).</p>
<p>b.</p>	<p><i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i></p>
	<p>There are no express exceptions to the standard described above, either in caselaw or statute.</p>
<p>c.</p>	<p><i>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i></p>
	<p>The absence of legal representation in the original proceedings, in itself, is unlikely to amount to grounds to resist recognition or enforcement of the foreign judgment in</p>

	<p>Singapore. Under Singapore law, there is only a right to legal representation when a person is arrested (see Article 9(3) of the Constitution of the Republic of Singapore). In civil matters, individuals may choose to engage counsel or to represent themselves, though companies and other legal entities are generally required to appear by counsel in court proceedings (see O 4 r 3 ROC 2021).</p> <p>Neither the REFJA nor CCAA contain a requirement that a defendant must have legal representation in the original proceedings before the foreign judgment may be enforced.</p> <p>If, however, legal representation was denied, this may amount to a breach of natural justice, which may form basis to refuse recognition or enforcement.</p>
<i>d.</i>	<p><i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i></p>
	<p>See above.</p>
6.	<p>What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state owned entities?</p>
	<p>As stated above, the exception under s 15(4) of the SIA operates to permit execution against the property of a State which is for the time being in use or intended for use for commercial purposes. This is given a broad definition under the SIA. S 2 of the SIA defines “<i>commercial purpose</i>” as the purposes of any transactions or activities mentioned in section 5(3) of the SIA, where “<i>commercial transaction</i>” is defined as (a) any contract for the supply of goods or services; (b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and (c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or in which it engages otherwise than in the exercise of sovereign authority.</p> <p>S 15(5) of the SIA gives the head of a State’s diplomatic mission in Singapore authority to issue a certificate to declare that any property is not in use or intended for use by or on behalf of the State for commercial purposes for this purpose. This certificate must be accepted as sufficient evidence of that fact unless the contrary is proved.</p> <p>In addition, execution may be issued against the property of a State in accordance with any written consent that the relevant State might have given (see s 15(3) SIA).</p>